



CITY COUNCIL SPECIAL MEETING ADDENDUM

September 26, 2014

7:30 a.m.

**Coon Rapids City Center
Council Chambers**

Call to Order

Pursuant to Minnesota Statute 13D.04, subd. 2, the City Council will meet in a special meeting to discuss the following

1. Harvest Grill Lease

Other Business

Adjourn



City Council Special Meeting Addendum

1.

Meeting Date: 09/26/2014

Subject: Harvest Grill Temporary Assignment

Submitted For: Steve Gatlin, City Manager

From: David Brodie, City Attorney

Information

INTRODUCTION

Council is asked to consider authorizing the execution of Temporary Assignment between Potluck Catering, Inc. (Potluck Catering), KB&J Enterprises, Inc. (KB&J) and the City.

DISCUSSION

Potluck Catering, owned by Jason Hines, d/b/a Harvest Grill entered into a Lease with the City on September 21, 2010 to operate the restaurant, banquet space and on course food and beverage service at Bunker Hills Golf Club. Addendums to the Lease were adopted on December 18, 2011, January 17, 2012, February 8, 2012, June 19, 2012, November 19, 2013, and January 7, 2013. All but one of the six addendums dealt with Potluck Caterings financial issues.

Potluck Catering is delinquent on its weekly rent and other financial obligation payments. Potluck Catering has not paid its weekly payments beginning with the week of August 18, 2014. As such, Potluck is in default under the Lease. Notice of the default was sent to Potluck Catering on September 9, 2014. Potluck Catering's past due amount owed to the City now exceeds \$78, 481.

In addition to the monies owed to the City, Potluck Catering is delinquent to the Minnesota Department of Revenue for unpaid sales tax. Given the delinquency, liquor wholesalers are unable to sell alcohol to Potluck Catering.

Rather than seek immediate removal which could potentially disrupt scheduled events, the City and Potluck Catering have engaged in a series of negotiations to provide a reasonable resolution. Resolution was sought that would allow operations at Harvest Grill to continue and to provide for an orderly transfer from Potluck Catering to a new vendor while protecting the City's interest in the property. Both the City and Potluck Catering are concerned about the impact this situation may have and wanted to ensure that the scheduled events for which a deposit has been paid are appropriately serviced and held without incident.

During the negotiations, the parties proposed a Temporary Assignment agreement. The agreement calls for the City to permit Potluck Catering to temporarily assign some of its obligations under the Lease to KB&J which is another one of Mr. Hines corporations. KB&J would then immediately take over the catering operations at Harvest Grill. Since KB&J is in good standing with the State it would be able to purchase alcohol for the catering operations.

This transitional agreement would be in effect until November 2, 2014, at which time Potluck Catering and KB&J would voluntarily leave the premises and the City would bring in a new vendor to take over beginning on November 3, 2014. In addition, Potluck Catering must provide all details to the City regarding all events booked going forward and cooperate with the transition to the new vendor.

While KB&J could immediately take over the operation of the catering business, it would have to apply to the City for a liquor license to operate the bar/restaurant. It is anticipated that Potluck Catering would continue to operate the

bar/restaurant until that time. The agreement also requires Potluck Catering or KB&J to resume rent payments. The agreement further provides that the Lease is still in affect so the City maintains all its rights to collect past rent due and any future rents.

This agreement is not without risk. KB&J, while currently in good standing with the State, has had its own financial issues that may come back and leave KB&J in a similar position as Potluck Catering. The City does not have complete assurances that the State will allow KB&J to obtain a liquor license under this scenario. These risks are tempered by the temporary nature of the agreement as well as providing a more immediate out if Potluck or KB&J cannot meet its obligations under the new agreement. The proposed agreement meets the City's intent to serve its best interests by allowing operations to continue with minimal impact on already scheduled events until a new vendor can be put in place.

The City has started the process of finding a new vendor which will be brought forward to the Council at a later meeting for approval.

RECOMMENDATION

City Staff recommends the Council authorize execution of the Temporary Assignment agreement.

Attachments

Temporary Assignment

TEMPORARY ASSIGNMENT

This Temporary Assignment (hereinafter "Assignment") is entered into by and between the City of Coon Rapids, (hereinafter "the City"), Potluck Catering, Inc., a Minnesota corporation doing business as Harvest Grill and as Town and Country Caterers, (hereinafter "Potluck"), and KB & J'S Enterprises, Inc. (hereinafter "KB&J"), on the _____ day of September, 2014.

WHEREAS, the City and Potluck entered into a Lease Agreement dated September 21, 2010 and entered into subsequent and multiple amendments (collectively referred to as "the Lease"); and

WHEREAS, pursuant to the Lease, Potluck operated, on the leased premises, the bar/restaurant known as the "Harvest Grill" in addition to providing food and beverage cart service for the golf course as well as hosting and catering special events; and

WHEREAS, Potluck is in breach of the Lease for, among other things, failure to pay rent on time and when due; and

WHEREAS, Potluck has lost its ability to use its liquor license to purchase alcohol; and

WHEREAS, Potluck has numerous upcoming events scheduled requiring it to provide full catering services including purchasing and serving alcohol with its liquor license; and

WHEREAS, the City and Potluck seek to ensure that the scheduled events for which a deposit has been paid are appropriately serviced and held without incident; and

WHEREAS, KB&J holds a valid liquor license for its catering business and is willing to take a temporary assignment of certain rights and obligations under the Lease in order to ensure Potluck and the City can fully service scheduled events and further to assist in the smooth transition of the hosting and catering business to a company chosen by the City.

NOW, THEREFORE, for good and reasonable consideration, the receipt of which is hereby acknowledged by both parties, the parties agree as follows:

1. The Lease remains in full force and effect until further agreement of the parties including, but not limited to, the City's right to inspect the premises, fixtures, equipment and inventory.
2. Prior to the assignment of any rights from Potluck to KB&J becoming effective, KB&J shall provide to the City proof of insurance, including workers compensation, commercial general liability, liquor liability and commercial automobile, with the City named as an additional insured. Additionally, KB&J will provide proof to the City that any and all licenses held by KB&J are current and in good standing.
3. The City agrees to Potluck's temporary assignment of its rights and/or obligations to host and cater events at the leased premises to KB&J until November 2, 2014, or until KB&J

cannot or will not be able to service the restaurant and events. In the event that KB&J is not able to provide liquor or food, the City will have the immediate right to bring in their own caterers to take over all events.

4. Potluck will immediately provide to the City all information related to events scheduled/booked from the date of this agreement going forward. The information will include, but is not limited to, the event names, contract information, deposits made and/or other monies paid, and any and all further details of what is expected or requested by the contracting party.

5. Potluck will continue to operate the Harvest Grill bar and restaurant and the golf course food and beverage cart service until such time as KB&J obtains a liquor license from the City. Once KB&J is issued the liquor license, Potluck will relinquish its liquor license immediately. KB&J agrees it will relinquish the liquor license issued by the City at the end of this temporary assignment and no later than November 2, 2014.

6. In an effort to effect an orderly temporary transfer of Potluck's rights /obligations under the Lease to KB&J and ultimately to a company chosen by the City, Potluck and KB&J agree that the City may talk to and consult with current employees of Potluck and/or KB&J including, but not limited to, the current general manager and catering manager, regarding hosting and catering operations, restaurant and bar operations, and beverage and food cart operations.

7. Potluck will relinquish control of the lease space on November 2, 2014, without further legal process.

8. Potluck and/or KB&J agree to pay the weekly rent starting the week of September 22, 2014.

9. The City and Potluck will attempt to negotiate resolutions of other issues related to the Lease prior to November 2, 2014.

CITY OF COON RAPIDS

By:_____

Its:_____

Dated: September ____, 2014

By:_____

Its:_____

Dated: September ____, 2014

POTLUCK CATERING, INC.

By: _____

Its: _____

Dated: September ____, 2014

KB & J's ENTERPRISES, INC.

By: _____

Its: _____

Dated: September ____, 2014

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